

STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

C. DAVID BELL,
Appellant,

and

STATE OF IOWA (DEPARTMENT OF
CORRECTIONS),

Appellee.

CLOSED HEARING

-11

ADJUDICATOR'S DECISION

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APPEARANCES

For the Appellant:

Robert L. Hansen, Attorney at Law

For the Appellee:

Herbert Rogers, Sr., Attorney at Law
Charles Higgins, Deputy Superintendent,
Mount Pleasant Correctional Facility
Dudley Allison, Treatment Manager,
Mount Pleasant Correctional Facility
Wes Shaffer, Supervisor of Buildings and Grounds,
Mount Pleasant Correctional Facility

I. JURISDICTION

Pursuant to Section 19A.14(1), Code of Iowa (1987) and 621 Iowa Admin. Code, Chapter 11 (1988), C. David Bell (hereinafter Bell or Appellant) appeals his ten working day suspension from the position of Activities Specialist at the Mount Pleasant Correctional Facility, (hereinafter MPCF). A closed hearing on Bell's appeal was held on May 16, 1989, at the Public Employment Relations Board (hereinafter PERB). The hearing was reported by a certified shorthand reporter. The parties were given full opportunity to present evidence and arguments, and the parties

elected not to file briefs.

II. ISSUE

The issue in this case is whether the State of Iowa, specifically the Department of Corrections (hereinafter State) had just cause to discipline the Appellant.

III. FINDINGS OF FACT

The Mount Pleasant Correctional Facility is a medium security unit of the Iowa Department of Corrections located in Mount Pleasant, Iowa.

Appellant Bell has been employed at MPCF as an Activity Specialist I since January of 1985. He was previously suspended for ten working days in September, 1987, for violation of MPCF Work Rule 12 and MPCF Tool Control Policy II-A-7.1, when he brought an unauthorized contraband hacksaw blade and handle inside the institution. (Joint Exhibit 7).

The incidents leading up to Bell's suspension, in this case, began on April 30, 1988. On that day, Correctional Officer John Almendinger (hereinafter Officer Almendinger), under the direction of Lieutenant Mike Babcock (hereinafter Lt. Babcock), checked out a 150 foot garden hose from the Maintenance and Housekeeping Department and gave it to inmate workers. Neither Lt. Babcock nor Officer Almendinger checked the hose back in before the building closed at 3:15 p.m.¹ At 3:30 p.m., an inmate told Bell that he had

¹The Maintenance and Housekeeping building is a secured area and staff are available for tool check out and return at 7:45-8:00 a.m. and 3:00-3:15 p.m. (Joint Exhibit 4A).

attempted to return the hose to the Maintenance and Housekeeping Department, but that the area was locked. Bell informed the inmate that the hose would have to be returned to the garage/ambulance entrance and be secured in the locked cage. The inmate put the hose in the garage/ambulance building, as Bell instructed, but Bell did not lock the hose in the secured area. Consequently, the hose remained on the garage floor, an unsecured area, until it was discovered on May 2, 1988 by Mr. Wes Schaffer, correctional building services coordinator.

An investigation of the incident was conducted by Captain Bill Hixson. During the investigation, statements were taken from Officer Almendinger, Inmate Hogue, Inmate Schmidt, Mr. Wes Shaffer, Lt. Babcock, and the Appellant. Captain Hixson also contacted Correctional Officer Kathy Simons who had been assigned to the Turnkey. Based upon his investigation, Captain Hixson recommended to Security Director Higgins that Officer Almendinger and Lt. Babcock receive a written reprimand and that the Appellant be terminated since Bell had previously received a ten working day suspension for a violation of the same Tool Control Policy and that he was ultimately responsible to assure that the hose was secured.

A committee met to determine and make recommendations to Superintendent David Scurr as to what disciplinary action, if any,

should be taken against the Appellant, Officer Almendinger, and Lt. Babcock.² Superintendent Scurr made the final decision.

The Appellant was suspended for the alleged violation of Work Rules 11 and 18, and Tool Control Policy II-A-7.1. The Work Rules provide in part:

11. Employees supervising inmates will insure that their charges maintain constructive involvement in assigned programs and avoid unauthorized activities; requiring them to follow all rules of the institution and will not permit inmate insubordination.

Every employee shall be held responsible for the efficient, punctual performance of all duties assigned including post and general orders and for the proper supervision of inmates detailed to work under his/her direction. Any need for changes in post or general orders are to be reported to the supervisor.

18. Staff will be alert at all times in order to maintain security and discipline.

(Joint Exhibit 3).

MPCF'S Tool Control Policy II-A-7.1 provides in part that:

All tools, toxic materials, culinary and medical equipment used in the institution will be used in a safe, economical and secure way. Accountability and responsibility for issue, storage, receipt and disposal of tools and toxic materials will be done according to procedures.

(Joint Exhibit 4). All tools at MPCF are "classified as to their degree of seriousness as far as safety and security..." Id. Water hoses have been classified as a Class A tool which means that this tool "can be used in effecting an escape and/or cause death or serious injury. These tools will be locked at all times when not

²Testimony was not clear as to how much authority the Committee had in determining employee discipline. Nor was there concrete evidence as to what recommendation the Committee made.

in use. They will be in DIRECT employee supervision when in use."
Id.

There is no dispute that Bell was aware of the Work Rules and the Tool Control Policy. After reading these rules, the Appellant signed acknowledgement forms on January 25, 1985, September 30, 1987 and January 5, 1988. (Joint Exhibits 4A, 5 and 6).

IV. CONCLUSIONS OF LAW

Section 19A.14(1), Code of Iowa (1987) provides that PERB hearings on merit appeals shall be conducted in accordance with PERB rules, and the Iowa Administrative Procedure Act, Chapter 17A, Code of Iowa (1987), and "that decisions rendered shall be based upon a standard of just cause". If PERB finds that the action taken by the appointing authority was for other than just cause, then appropriate remedy is fashioned.³

Therefore, it must be determined whether just cause existed for the State to suspend the Appellant for ten working days. In determining whether just cause exists, a number of factors must be examined.⁴ These factors include:⁵

1. Whether there was a full and fair investigation before the decision to discipline the employee was made;

³Those reasons include "that the action taken by the appointing authority was for political, religious, racial, national origin, sex, age or other reasons not constituting just cause." See Iowa Code Section 19A.14(1) (1987).

⁴Brown & Iowa Department of Corrections, 88-MA-09 (Adjudicator's Decision); Wessling & Iowa Department of Transportation, 87-MA-10 (Adjudicator's Decision).

⁵Id.

2. Whether reasons for the discipline were adequately communicated to the grievant;
3. The grievant's employment record, including years of service, performance, and disciplinary record;
4. Whether progressive discipline was followed, or not applicable under the circumstances; and
5. Mitigating circumstances which would justify a lesser penalty.

In determining whether a full and fair investigation was conducted, the record reveals that an investigator was assigned, and that an investigation was conducted the day the hose was discovered in the unsecured area. The investigation consisted of securing statements from the involved employees and inmates, and the investigator making disciplinary recommendations. Shortly thereafter, a committee met and made disciplinary recommendations to Superintendent Scurr. The Appellant does not allege that there was not a full or unfair investigation of the incident. Therefore, it must be concluded that a full and fair investigation was made prior to the State's decision to discipline the Appellant.

Based upon the record, it is also clear that the reasons for the discipline were adequately communicated to the Appellant. A Supervisor's Notation was made which was read and signed by the Appellant. (Joint Exhibit 8). Nor were there any allegations to the contrary. Based upon the foregoing, I conclude that the reasons for the discipline were adequately communicated to the Appellant.

The third factor in determining whether there was just cause to suspend Bell for ten working days is the Appellant's employment record. Based upon Bell's past performance reviews/evaluations, it appears that the Appellant is a "competent" employee. (Joint Exhibit 13 and Appellant's Exhibit A). However, also reflected in the Appellant's evaluations is a previous incident of horseplay which resulted in the Appellant being counseled. Less than a year earlier, Bell had been disciplined for violating MPCF's tool control policy which prohibited bringing contraband (hacksaw blade and handle) into the institution. Although these violations of the tool control policy are seemingly unrelated, both are classified as Class A tools. Because of its seriousness, the first violation resulted in a ten working day suspension. After that suspension, the Appellant attended tool control training and individually studied the tool control policy. (Joint Exhibit 4A).

Consequently, there is no doubt that the Appellant knew of the tool control policy and what was expected of him. It appears that he just did not follow the policy.

The fourth factor is whether progressive discipline was followed or is applicable. The concept of progressive discipline is embodied in the rules of the Iowa Department of Personnel (hereinafter IDOP). See 581 Iowa Admin. Code 11.2. The purpose of progressive discipline is to correct an employee's behavior, rather than merely to punish. See Wullner v. Iowa Department of Corrections, 87-MA-16, at p. 4 (Adjudicator's Decision). Normally, progressive discipline results in the penalties becoming more

severe. However, in the instant case, the discipline was not progressive since he had previously received a ten-day suspension. The reason for the same penalty being given was that the first tool control policy violation was more serious in nature. Therefore, it does not appear necessary that this incident result in a harsher penalty in order to correct behavior. Nor did either party allege that progressive discipline was not followed. Consequently, I do not find progressive discipline to be applicable under the circumstances.

The Appellant alleges that there are mitigating circumstances which would justify a lesser penalty. Bell contends that a ten working day suspension was too harsh a penalty considering that he had not checked out the hose and that the real culprits in the incident were Lt. Babcock and Officer Almendinger since they checked out the hose and failed to return it to the secured area. It is also alleged that if Bell was at fault, then Bell's penalty should be the same as the other two; a written reprimand.

The State asserts that Bell, by leaving the hose in an unsecured location, violated Work Rules 11 and 18 and the Tool Control Policy II-A-7.1. It believes that there was just cause to warrant the ten working day suspension due to the incident's severity and the Appellant's record of prior discipline.

The weight of the evidence supports the discipline imposed. Bell had previously violated the tool control policy less than a year prior to when this violation occurred, and he had received training as a result of the first violation. Consequently, he knew

the tool control policy. Additionally, the Appellant's response indicated to the inmate returning the hose that he took responsibility for the hose. However, after Bell assumed responsibility for the hose, he did not take any steps to secure it. Bell could have notified his supervisor if he was unclear as to what action to take in securing the hose, he could have requested a key to housekeeping so as to secure the hose, or he could have secured it in the cage located in the garage as he had indicated he would do. However, his inaction resulted in a breach of security which could have had dangerous implications; i.e. used in a possible escape from the institution.

It is recognized that Officer Almendinger and Lt. Babcock received lesser penalties than the Appellant. However, it is noted that although the other two were involved in checking out the hose, the inmate came to Bell with the hose and Bell verbally took responsibility for securing the hose. Additionally, there was testimony that this was Officer Almendinger's first violation of Tool Control Policy II-A-7.1. Whereas, it was the Appellant's second violation in less than one year, and after the first violation Bell had received additional training as to this policy. Consequently, there is sufficient evidence to justify the discrepancy in penalties.

Having reviewed each of the arguments raised by the Appellant, I conclude that the Appellee, State of Iowa, specifically the Department of Corrections, has established just cause for its ten

working day suspension of C. David Bell issued on May 10, 1988, and effective May 10, 1988.

V. AWARD

Based upon the foregoing, the Appellant's appeal is denied.

DATED at Des Moines, Iowa this 28th day of July, 1989.

Susan M. Bolte
SUSAN M. BOLTE,
ADMINISTRATIVE LAW JUDGE

Copies to: C. David Bell
Robert L. Hansen
Herbert Rogers, Sr.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing instrument was served upon each of the attorneys of record of all parties to the above-entitled cause by enclosing the same in an envelope addressed to each such attorney at his respective address as disclosed by the pleadings of record herein, with postage duly paid, and by depositing said envelope in a United States Post Office depository in Des Moines, Iowa, on the 28th day of July, 1989.

Susan M. Bolte